

**IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION**

**BRET A. BIELEMA**

**PLAINTIFF**

**v.**

**5:20-cv-05104-PKH**

**THE RAZORBACK FOUNDATION, INC.**

**DEFENDANT**

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**THE RAZORBACK FOUNDATION, INC.**

**COUNTER-PLAINTIFF**

**V.**

**BRET A. BIELEMA and NEIL CORNRICH**

**COUNTER-DEFENDANTS**

**DEFENDANT/COUNTER-PLAINTIFF'S MOTION TO COMPEL**

Defendant/Counter-Plaintiff, The Razorback Foundation, Inc. (the “**Foundation**”), by its attorneys, hereby moves for an Order compelling Compliance with the Subpoenas *Duces Tecum* (the “Subpoena”) it served on Dennis Dodd and states as follows:

1. The Foundation issued the Subpoena to Dennis Dodd, requesting documents and communications with Bret Bielema or anyone acting on his behalf, documents and communications regarding Bret Bielema, and documents and communications regarding Dodd’s July 3, 2018 article about Bielema. A true and correct copy of the Subpoena is attached hereto as Exhibit A. The Subpoena required production of documents on or before November 30, 2020.

2. Dodd was personally served with the Subpoena on November 13, 2020. *See* Ex. B.

3. On November 25, 2020, Dodd’s counsel served objections. *See* Ex. C. The objections consisted almost entirely of boilerplate general objections. Dodd appeared to primarily object on the basis of news reporting or reporter’s privileges.

4. The Foundation responded by letter dated December 7, 2020, asserting that the Subpoena was proper, Dodd was properly served, and Dodd’s blanket objections were improper.

The Foundation also requested a privilege log for any documents being withheld on the basis of privilege in order to assess whether and to what extent the Subpoena impinged on Dodd's First Amendment interests. *See* Ex. D.

5. On December 15, 2020, Dodd's counsel responded by email, confirming that he stood on his previous objections and refusing to provide a privilege log.

6. On December 18, 2020, counsel for the Foundation and counsel for Dodd conferred by telephone. On that call, Dodd's counsel reaffirmed his objection that Dodd had not been properly served and stood on his previously asserted objections, including reporter's privilege. Notwithstanding his objections, Dodd's counsel stated that he did not believe that Dodd had any documents that he believed were relevant to the lawsuit. Notably, however, he did not state that he did not have any documents that were responsive to the Subpoena. In response, the Foundation offered to agree to suspend Mr. Dodd's compliance with the Subpoena in exchange for a signed declaration agreeing that if Dodd decided in the future to voluntarily participate in the case, then he would provide all documents responsive to the Subpoena.

7. On December 21, 2020, counsel for the Foundation emailed Dodd's counsel a draft declaration to that effect. The Foundation also provided a revised affidavit of service, confirming that Dodd was properly served. The Foundation requested a response by January 6, 2021.

8. As of the date of this filing, Mr. Dodd's counsel has not responded to the Foundation's latest email and has failed to produce any documents in response to the Subpoena.

9. Pursuant to Local Rule 7.2(g) and the Court's Final Scheduling Order (Doc. No. 40), counsel for the Foundation certifies that they have conferred by telephone and through email with Dodd's counsel in a good-faith effort to resolve the issues raised in the instant motion and were unable to resolve the disagreement without the intervention of the Court.

10. The Foundation incorporates by reference its Brief in Support, which is attached hereto, and files the following supporting exhibits herewith, which also are incorporated by reference:

- Exhibit A Subpoena Issued to Dennis Dodd (Nov. 13, 2020);
- Exhibit B Affidavit of Service (Nov. 13, 2020);
- Exhibit C Email from Dodd's counsel (Nov. 25, 2020);
- Exhibit D Letter from Foundation's counsel (Dec. 7, 2020);
- Exhibit E Email from Dodd's counsel (Dec. 15, 2020);
- Exhibit F Email from Foundation's counsel (Dec. 21, 2020);
- Exhibit G Dennis Dodd, CBS Sports, *Bret Bielema is enjoying the NFL so much, he may never go back to college football* (July 13, 2018); and
- Exhibit H Bielema's Supplemental Response to Interrogatory No. 16.

WHEREFORE, the Foundation requests that the Court compel production of all documents responsive to the Subpoenas *Duces Tecum* served on Dennis Dodd and for any and all other relief the Court deems just and proper. Alternatively, should the Court decide not to enforce the Subpoena, the Foundation requests that Dodd not be allowed to participate in this matter for either side either through the production of documents or sworn testimony.

Respectfully submitted,

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By: /s/ Marshall S. Ney  
Marshall S. Ney, AR Bar 91108

**CERTIFICATE OF SERVICE**

I, Marshall S. Ney, do hereby certify that the foregoing is being electronically filed with the Court and that the below listed persons will receive a copy of the foregoing via the Court's electronic notification system (ECF), on or about this 15th day of January, 2021:

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Additionally, I, Marshall S. Ney, do hereby certify that the below listed persons will receive a copy of the foregoing via e-mail and U.S. Mail, postage prepaid, on or about this 15th day of January, 2021:

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/s/ Marshall S. Ney  
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